

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**RAS 8204**

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Ann Marshall Young, Chair  
Anthony J. Baratta  
Thomas S. Elleman

DOCKETED  
USNRC

July 28, 2004 (2:24PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**SERVED July 28, 2004**

In the Matter of

DUKE ENERGY CORPORATION

(Catawba Nuclear Station, Units 1 and 2)

Docket No's. 50-413-OLA, 50-414-OLA

ASLBP No. 03-815-03-OLA

July 28, 2004

MEMORANDUM and ORDER  
(Confirming July 16, 2004, Bench Ruling  
Suspending Discovery Proceedings Pending Further Commission Guidance)

During a closed session in this proceeding<sup>1</sup> held July 16, 2004, this Licensing Board made an oral bench ruling on certain discovery-related matters. See Tr. 2819-21. This document confirms that ruling, which has the effect of staying and holding in abeyance further argument and rulings on recent motions to compel filed by all three parties in the proceeding, and of suspending discovery generally, pending further guidance from the Commission<sup>2</sup> when it

---

<sup>1</sup>This proceeding involves Duke Energy Corporation's (Duke's) February 2003 application to amend the operating license for its Catawba Nuclear Station to allow the use of four mixed oxide (MOX) lead test assemblies at the station. On September 17, 2003, this Licensing Board was established to preside over this proceeding. 68 Fed. Reg. 55,414 (Sept. 25, 2003). By Memoranda and Orders dated March 5 and April 12, 2004 (the latter sealed as Safeguards Information; redacted version issued May 28, 2004), the Licensing Board granted Blue Ridge Environmental Defense League [BREDL]'s request for hearing and admitted various non-security-related and security-related contentions. LBP-04-04, 59 NRC \_\_ (2004); LBP-04-10, 59 NRC \_\_ (2004).

<sup>2</sup>We note that on July 27, after this memorandum and order had already been drafted, the Licensing Board received an e-mail, forwarded by Chief Administrative Judge G. Paul Bollwerk, providing notification of a 9:25 a.m. July 29, 2004, affirmation session of the Commission in which it would be affirming a paper relating to "SECY-04-0120, Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); NRC Staff's Petition for Interlocutory Review of the Licensing Board's June 25, 2004 Oral Order (Finding the Intervenor's Witness Qualified as an Expert in the Area of Nuclear Security)." (E-mail attached.) In consideration of the alternative possible practical impacts of this notification, the Board on July 26 held a short telephone conference with counsel for the parties to inform them of this notification and to discuss with them whether it might be possible to meet prior to the next scheduled closed session

rules on the Staff's appeal of our June 25, 2004, bench ruling, subsequently confirmed in a July 2 Memorandum and Order, on the expertise of Dr. Edwin Lyman on nuclear power plant security issues. *See id.*; LBP-04-13, 60 NRC \_\_\_\_ (July 2, 2004); Duke Energy Corporation [Duke] Motion to Compel Discovery Responses from Blue Ridge Environmental Defense League [BREDL] Relating to Security Contention 5 (July 8, 2004); NRC Staff's Motion to Compel BREDL to Respond to NRC Staff's First Set of Discovery Requests on Security Contention 5 (July 7, 2004); [BREDL]'s Motion to Compel Security-Related Discovery Responses by NRC Staff (July 8, 2004) [hereinafter BREDL Motion to Compel].

Herein, in addition to formally setting forth the rationale for our ruling, we provide some additional context that we find to be important in light of certain circumstances. First, the subject matter of this ruling is significant to the progress of this proceeding from the standpoint of efficiency and avoidance of delay. In addition, this subject matter is significant in that it involves several interrelated issues that appear to be critical to the ability of BREDL to litigate its one admitted security-related contention in any meaningful manner in this proceeding. Finally, some of these unusual, security-related issues appear to be of a sort that might well arise in some form in future proceedings involving security-related questions.

---

on August 10, to address the question of the most appropriate course to take in light of the Commission's ruling on July 29, whatever that ruling may be. Prior to this, on July 25, the Board had canceled a closed session originally scheduled for July 26, upon the joint request of counsel for all parties based upon their stated belief that "[b]ecause there ha[d] been no change in the status of the proceeding since we last met on June 16, [there would not be] any useful purpose [to] be served by convening" on July 27 as scheduled. E-mail from Diane Curran, on behalf of all parties, to Ann Young, Re: change in start time for 7/27 closed session (July 26, 2004) (copy attached).

In the July 27 telephone conference, it was decided to hold another telephone conference, to be transcribed on the record, at 9:00 a.m. on Tuesday, August 3, 2004, to consider further the options for proceeding in light of the Commission's decision, including a new proposed schedule for the remaining discovery on security-related matters; this conference will of course, however, be conducted in a manner so as to assure that no safeguards information is disclosed during discussion of such options. Prior to this conference, the parties will file written proposals for action in light of the Commission's decision, by 5:00 p.m. Friday, July 30, 2004. Thereafter, the previously-scheduled August 10 closed session will be held as planned, at which time any necessary safeguards issues can be addressed directly.

By way of background, in LBP-04-13, the matter before the Board was the Staff's June 23, 2004, determination — made in response to BREDL's June 19, 2004, Request for Need to Know Determination regarding certain documents sought in discovery on security-related issues — that "BREDL does not have a need to know for the documents" in question, based on the Staff's finding that "there is insufficient basis on the record to find that BREDL's proffered security expert, Dr. [Edwin] Lyman, is an expert on security matters." NRC Staff's Response to [BREDL]'s Request for a Need to Know Determination (June 23, 2004), at 2; *see* Letter from Diane Curran to Susan L. Uttal, Esq. (June 19, 2004). During the June 25 session, BREDL counsel requested an opportunity to present Dr. Lyman's qualifications formally, which was permitted without objection from either the Staff or Duke. Tr. 1970. After questioning of Dr. Lyman by all counsel and the Board, and arguments of counsel, the Board found Dr. Lyman to be an expert on nuclear plant security issues, based upon his having demonstrated sufficient knowledge, skill, experience, training, and education to be able to ask appropriate probing questions and do appropriate evaluation on behalf of Intervenor BREDL, and thereby to assist and aid the Board in making our determinations on the security issues in this proceeding. Tr. 2029. As indicated above, we confirmed this oral bench ruling in LBP-04-13, setting forth in writing the rationale and authority for our ruling. Further, as stated in note 2 above, the Staff's appeal of this ruling, currently pending before the Commission, is expected to be ruled on in an order to be affirmed on July 29, 2004.

The circumstances that led to our instant ruling began in the course of discussion during the July 16 session on the Staff's motion to compel discovery responses from BREDL, as well as on more general issues relating to all of the parties' motions. *See* Tr. 2744-45. After BREDL counsel made certain arguments concerning the meaning and impact of the Commission's decision in CLI-04-19, 60 NRC \_\_\_\_ (July 7, 2004) (concerning questions we certified in LBP-04-10), using as context certain Duke responses to BREDL interrogatories,

Tr. 2777-81, Dr. Lyman provided additional factual information and context on the relationship between Duke's new proposed MOX-fuel-related security measures and its existing security measures. Tr. 2782-84. After Dr. Lyman had provided his explanation regarding various aspects of this relationship, Staff counsel objected to Dr. Lyman speaking based on his not having "made an appearance on . . . behalf of BREDL in this case." Tr. 2784. This objection led to a rather lengthy discussion during which it became apparent that the pending Commission ruling on the expertise of Dr. Lyman was integral not only to the particular objection, but to many matters at issue in the parties' pending motions to compel, as well as to the progress of discovery generally on security issues at the present time.

During the discussion on the Staff's objection, the Board noted early on an "understanding [that had developed over the course of the entire proceeding] that to move forward more efficiently and quickly . . . all of the parties' experts [including Dr. Lyman have been allowed] to speak, where it would be quicker to do that," from time to time. Tr. 2787; *see* Tr. 2805-06. We also observed that we had, without objection, in the July 14-15, 2004, evidentiary hearing on BREDL's remaining non-security-related contention, given all the parties the option of having their experts cross-examine other experts, in order to further the efficient conduct of the hearing. Tr. 2787, 2805; *see* Tr. 2112, 2145; former 10 C.F.R. § 2.733<sup>3</sup>. Also remarked was the expectation that it would be Dr. Lyman who would be providing responses to the Staff's interrogatories. Tr. 2788.

Staff counsel then raised the issue of Dr. Lyman's expertise, suggesting for the first time that the Board's ruling on this, which has been stayed by the Commission based on the Staff's appeal pending further order, encompassed not only Dr. Lyman's expertise with regard to the

---

<sup>3</sup>This proceeding having commenced under the rules of procedure found at 10 C.F.R. Part 2, Subpart G, and in effect prior to February 13, 2004, it is governed by the old rules. For information purposes, the new section that incorporates the provisions of former § 2.733 is § 2.703.

specific need-to-know issue and documents that were the subject of that ruling, but also his expertise generally in the area of nuclear power plant security.<sup>4</sup> Tr. 2788-89. Staff counsel also asserted that “whether . . . Dr. Lyman is an expert in the area of security is irrelevant to the consideration of the Staff’s motions [sic] to compel,” Tr. 2789, but continued to argue that Dr. Lyman does not possess such expertise. Tr. 2790-91. Staff counsel ultimately indicated that it was the Staff’s position that Dr. Lyman has “nothing probative to say in this proceeding on security issues.” Tr. 2808-09.

We note that Duke expressed no objection to Dr. Lyman’s speaking to the context of the discovery response at the time, and later stated through counsel that it was “perfectly willing to continue to allow the latitude” that had been afforded BREDL in having Dr. Lyman explain various matters (but stating also that it did not want this to be construed to be a waiver of any possible objection at some point in the future<sup>5</sup>). Tr. 2811-12.

After hearing counsel’s arguments and then conferring, the Board announced its ruling. We stated first our finding that the issue of whether Dr. Lyman should be able to speak on factually-related issues during the July 16 session was subordinate to the larger underlying issues relating to the expertise of Dr. Lyman with regard to nuclear power plant security.

---

<sup>4</sup>We note that, given the Staff’s broad interpretation of the subject matter of the ruling on Dr. Lyman’s expertise, the question arises why this matter was not raised earlier — for example, when the Staff, on October 8, 2003, submitted, along with Duke, the first proposed protective order in this proceeding, in which Dr. Lyman is listed as one of the persons who would be afforded access to information consisting of, among other things, Duke’s September 15, 2003, security submittal, “including revision 16 to the [Duke] Security and Contingency Plan.” Motion for Protective Order (Oct. 8, 2003), Attached [proposed] Memorandum and Order (Protective Order Governing [Duke]’s September 15, 2003 Security Plan Submittal). Although the parties retained the right to object to Dr. Lyman’s qualifications to testify concerning matters in this proceeding, *id.* at 2, presumably the same principles applicable to his expertise as part of his “need to know” regarding the matters at issue in LBP-04-13 would have also been applicable to the September 2003 security submittal.

<sup>5</sup>We also note that the transcript indicates that Duke counsel stated that he did not “want that past practice and any silence today to be construed as waiving an objection at some point, *but* we believe that the practice has crossed the line and might present some of the problems that I’ve alluded to.” Tr. 2812 (emphasis added). It appears to us that the word “but” should have been transcribed as “that,” based on our understanding of counsel’s statement, and on its context.

Tr. 2819. We noted the Staff's strongly expressed argument and position that Dr. Lyman is not such an expert and indeed has nothing probative to provide in this proceeding regarding security issues, as well the Staff's current position that the Commission's stay order and the Staff's appeal to the Commission encompass more than the particular need-to-know issue and documents that were the subject of our ruling on Dr. Lyman's expertise. Tr. 2819-20. We also noted BREDL's indication that it has no other expert and is not in a position to obtain another expert. Tr. 2820. We observed that it is apparent that on virtually every portion of all three motions to compel before us we would continually come back to the recurring and interrelated need-to-know, expertise, and "ability-to-determine-the-sufficiency-of-Duke's-plans" issues, which the Commission's ruling on Dr. Lyman's expertise should illuminate. *Id.* Based on these considerations, we stated our conclusion that it would not be productive or efficient use of time to proceed any further on the motions to compel, or with discovery on security issues, prior to receiving further guidance from the Commission relative to the Staff's appeal of our ruling on Dr. Lyman's expertise. Tr. 2820-21. We thus stayed any further argument and rulings on the motions to compel, and suspended discovery on security-related issues, pending receipt of such guidance. *Id.*

We hereby confirm these observations, findings, conclusion and ruling. Based on the extent to which, and energy with which, arguments centered on the need-to-know and related questions currently surrounding the issue of Dr. Lyman's expertise have been made, it still appears to us that it would not have been efficient, productive, or indeed even possible for the motions to compel to be addressed, or for security-related discovery to proceed, in a coherent manner without at least the benefit of the Commission's ruling on Dr. Lyman's expertise. This is particularly so, given that his expertise now appears to be so closely tied to the willingness of the Staff to provide documents requested by BREDL, and given that the ability of BREDL to

proceed is, as a practical matter, so closely tied to its ability to utilize Dr. Lyman as an expert on security matters.

With regard to any delay accruing from this ruling, our view is that greater delay and duplicative and/or unnecessary expenditures of resources would likely have resulted, and would generally result, from continuing to “re-plow the same ground” over and over again, in various contexts, relative to the interrelated issues described in the preceding paragraphs. A large number of disputed issues in the parties’ motions to compel would, had they been ruled on prior to receiving the benefit of the Commission’s ruling on the Staff’s appeal of LBP-04-13, have likely produced a number of rulings that might in turn have prompted (and indeed may possibly still prompt) an additional number of interlocutory appeals by one or another party to the Commission, thus multiplying the potential amount of delay. As a Board we have consistently endeavored to move this proceeding forward in the most timely, efficient, and meaningful way possible, most recently observing the desirability of allowing for some informalities in the interest of achieving greater efficiency — one of the benefits administrative adjudication affords, if appropriately undertaken. See Tr. 2813. We continue to maintain our goal of conducting an efficient and meaningful proceeding, with timely attention to the matters that present themselves to us. In this vein, if all that faced us on July 16 and/or at this time were the appropriateness, in the interest of efficiency in addressing the motions to compel, of allowing some leeway for Dr. Lyman to address the board on discovery-related factual questions, our course on July 16 would then have been, and would now be, quite simple.

Addressing this relatively less critical issue, however, took us on July 16 fairly quickly into discussion of the broader and more significant underlying issues described above, which appear to us to be quite critical in the security-related portion of this proceeding. Tr. 2814. These issues, as indicated above, involve a recurring series of “need-to-know” requests and determinations, as well as questions of how to determine the sufficiency of Duke’s plans and

what information is needed in order to do that, and the related and now-central matter of the determination of Dr. Lyman's qualification as an expert in the area of nuclear power plant security. Although at this juncture only the motions to compel pend before us, these broader issues have become and continue to be interrelated with each other in this proceeding, touch as well on a number of other aspects of the proceeding, including discovery, and may also have implications beyond the confines of this case, in future proceedings in which security-related matters and questions of expert qualification are at issue. As we have observed, these issues have "drawn our attention repeatedly" in this proceeding, and they are issues that all the parties in this proceeding are "struggling with, and that are to one degree or another currently pending before the Commission." Tr. 2813.

It is these broader issues that have presented the greatest potential for delay in this proceeding, as indeed, they have already proven to be in fact. And although the Commission may not resolve all such issues, its pending ruling should provide guidance that may be utilized in determining the next steps to take in this proceeding in a more efficient, effective and meaningful fashion. When such broad and recurring issues of significance come to dominate a part or parts of a proceeding, as they have in this one, the most appropriate course may often be to address such issues in a manner calculated to best assure a correspondingly broad resolution, so as to achieve the greatest likelihood of forestalling the sort of recurring disputes that can lead to a multiplication of delays and inefficiencies in the conduct of the proceeding when such matters are addressed in a more "piecemeal" manner, particularly when there are indications that frequent interlocutory appeals on such disputed issues are to be expected, as has been the case in this proceeding.<sup>6</sup>

---

<sup>6</sup>The Staff's current appeal to the Commission is the third interlocutory appeal it has filed with regard to our rulings on security-related need-to-know issues, the first two relating to our rulings (1) on access to certain orders the NRC issued in 2003 to modify licenses at reactor facilities with regard to the  
(continued...)

In this regard, the context surrounding the above-described issues in this proceeding includes,<sup>7</sup> as indicated above, BREDL's indication that it has no expert other than Dr. Lyman, and that it is not in a position to obtain another expert. The relevance of this to the issue of

---

<sup>6</sup>(...continued)

design-basis threat for commercial nuclear reactors, and (2) on access to a closed meeting (or a transcript thereof) between the Staff and Duke to discuss certain Staff requests for additional information (RAIs) on Duke's September 15, 2003, security submittal. See Memorandum (Providing Notice of Granting BREDL Motion for Need to Know Determination and Extension of Deadline for Filing Security-Related Contentions) (Jan 29, 2004); Memorandum and Order (Ruling on BREDL Motion Regarding Staff February 6, 2004, Meeting with Duke Energy and Request for Need to Know Determination (Feb. 4, 2004); CLI-04-6, 59 NRC 62, 68-70 (2004).

<sup>7</sup>In addition to those recounted in the text of this memorandum and order, there are several additional considerations, relating to matters that appear to require resolution prior to being able to move forward effectively in discovery on BREDL's security contention, that provide further indication that it would be appropriate to await further word from the Commission at this time. For example, we note a Duke June 23, 2004, request to the Staff for a need-to-know determination regarding certain materials BREDL seeks from Duke in discovery, which request is currently pending with the Staff. See Tr. 1945. The Staff stated on June 25 both that it "[had not] reached a final determination" on this, *id.*, and that it anticipated that Duke would make its own initial need-to-know determination on documents of which it is the holder. Tr. 1949.

On Duke's part, it has indicated that it reads CLI-04-06 as suggesting that there should be early coordination with the Staff on such determinations, Tr. 1950, and stated through counsel on July 16 that it had "been forwarding documents which have been identified as responsive to BREDL discovery requests to the Staff for determination of need to know," clarifying that it meant "initial determination, because the question may again come before this Board as to the final determination of need to know." Tr. 2730. In response to this, Staff counsel indicated that the Staff was awaiting the Commission's ruling, and that "if the Commission were to rule in agreement with the Board, [the Staff would] produce them as quickly as possible." *Id.*; see also Tr. 2732-35. It appears, however, that the situation is not altogether clear and, as suggested above, that there is a disagreement between Duke and the Staff as to which one should make the initial need-to-know determinations on such documents, with the Staff indicating that Duke should, and Duke arguing that the Staff is in a better position to do this. Tr. 2735-41; see Tr. 1950.

With regard to BREDL, it has brought to our attention that it has not yet submitted motions to compel with regard to such information on which need-to-know determinations have not yet been made, as they would be premature prior to such determinations, by the Staff and possibly by this Board. See Cover Letter, BREDL Motion to Compel. (The same reasoning would also appear to extend to determinations by the Commission as well, if any future Board rulings are appealed to the Commission as has previously occurred.) This information includes certain OSRE test results sought by BREDL, in regard to which Staff counsel has stated that whether these will be produced for BREDL depends on the Commission's pending ruling. Tr. 2723, 2727.

In addition to the above, the Board is currently awaiting the appointment of a new security representative to assist us with regard to security classification issues, after receiving word that Mr. Barry Manili, the Board's current assistant, would not be available for certain closed, security-related proceedings due to conflicting scheduling issues. See Request to Commission (Seeking Designation of New Representative To Advise and Assist Licensing Board With Respect to Classification of Information and Safeguards to Be Observed) (June 28, 2004).

delay may be inescapable as a practical matter, depending upon the Commission's ruling on the currently pending appeal. If the decision affirms Dr. Lyman's qualification as an expert in nuclear security matters, our path will, of course, be more straightforward. Should the Commission rule Dr. Lyman to be unqualified as an expert on security matters, however, then even if BREDL were able to retain another expert, other obvious and significant obstacles would exist. As we have previously noted, *see* LBP-04-10, slip op. at 9, Dr. Lyman possesses an NRC-issued "L"-level clearance that permits him to have access to certain protected material, assuming a need-to-know (which, until the Staff's recent determination regarding his expertise, and subsequent proceedings on this, had accorded him access to Duke's MOX security submittal and to all information to which BREDL counsel, who also obtained an NRC "L"-level clearance, has had access). The process for obtaining such a clearance took a period of some months, and it would presumably take an approximately equivalent time for another expert to go through the clearance process and develop an appreciation for the issues in this proceeding.

The Staff has insisted that issues of BREDL's ability to proceed without Dr. Lyman's expert participation are not matters of concern for any party other than BREDL. *See, e.g.,* Tr. 2789-93. And we would expect, should the Commission rule Dr. Lyman not to be qualified as an expert on security matters, that BREDL in particular would address how it anticipates proceeding at such a point. Whatever BREDL's response in such a situation, however, we would further expect that the reality of the situation in such case could not be ignored by, and would actually affect, all parties in this proceeding. This would involve the obvious question of how, without significant delay, BREDL could proceed any further in the security-related portion of this proceeding in any meaningful way, without Dr. Lyman serving as its security expert — given, as indicated above, how closely findings on his expertise appear to be tied to the willingness of the Staff to provide documents that BREDL asserts it needs in order to litigate its one security contention. And if a determination on Dr. Lyman's expertise results in BREDL not

being able as a practical matter to proceed further on the security-related aspects of this proceeding in any *meaningful* manner, additional questions would then arise, as to how to go forward on the security-related issues in any other manner in such circumstances, and to what purpose. If this turns out to be the situation that presents itself to us on July 29, we will expect the petitioners to address these matters in their written filings due July 30, and thereafter in the scheduled August 3 telephone conference and August 10 closed session.

We leave these questions for now, however, and in conclusion observe, as illustrated in the preceding account, that it is evident that issues central to discovery generally in the security-related portion of this proceeding, as well as to the current motions to compel specifically, are inextricably linked with the determination of Dr. Lyman's qualification as an expert in nuclear power plant security, which itself in turn impacts the resolution of the related issues of BREDL's need-to-know regarding various information and its ability to address the sufficiency of Duke's plans. Given such connections, we have deemed it the wisest and most efficient course of action, least productive of delay, to await the Commission's ruling on the expertise issue, and to proceed from there forward in the most efficient, effective and meaningful manner possible, taking into account all appropriate scheduling and other considerations.

We therefore hereby confirm our July 16 ruling, staying and holding in abeyance any further argument and rulings on the current motions to compel, and suspending discovery on security-related issues, pending the Commission's now soon-expected ruling on the Staff's appeal of our decision in LBP-04-13, relating to Dr. Lyman's expertise in matters of nuclear power plant security.

It is so ORDERED.

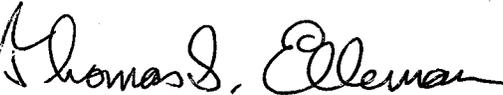
THE ATOMIC SAFETY  
AND LICENSING BOARD



Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE



Anthony J. Baratta  
ADMINISTRATIVE JUDGE



Thomas S. Elleman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 28, 2004<sup>8</sup>

---

<sup>8</sup>Copies of this document were sent this date by Internet e-mail to all parties.

**From:** David Gamberoni  
**To:** Commission Executive/Legal TAs; COMMISSION\_SCHEDULING\_LEADS;  
OCAA\_OFFICE; OGC\_OFFICE  
**Date:** 7/27/04 1:43PM  
**Subject:** AFFIRMATION - Thursday, July 29th, 9:25 a.m.  
**Place:** OPA

The following paper will be affirmed on Thursday, July 29, 2004, 9:25 a.m., Commissioners' Conference Room:

a. SECY-04-0120, Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); NRC Staff's Petition for Interlocutory Review of the Licensing Board's June 25, 2004 Oral Order (Finding the Intervenor's Witness Qualified as an Expert in the Area of Nuclear Security)

SECY

**CC:** ADM\_ELECTRONICS; ADM\_ROOMS; CFO\_OFFICE; Commission Administrative Assistants - Adjudicatory; EDO\_OFFICE; OCA\_OFFICE; OIP\_OFFICE; OPA\_OFFICE; SECY\_OFFICE\_OPS

**From:** Diane Curran <dcurran@harmoncurran.com>  
**To:** Ann Young <AMY@nrc.gov>  
**Date:** 7/26/04 1:37PM  
**Subject:** Re: change in start time for 7/27 closed session

Dear Judge Young,

I am writing on behalf of the parties to the security proceeding, to follow up on a telephone message that Mark Wetterhahn left on our behalf this morning. Because there has been no change in the status of the proceeding since we last met on June 16, we do not believe that any useful purpose would be served by convening tomorrow afternoon. Therefore, we request that you cancel the conference that is scheduled for tomorrow at 1:30 p.m. Hopefully, we will hear something from the Commission before the next time we are due to meet, on August 10.

Sincerely,  
Diane Curran

Ann Young wrote:

> Because of another proceeding in our hearing room tomorrow morning, and the need for security to check the room before we start our closed session in the Catawba proceeding tomorrow afternoon, we will be starting at 1:30 p.m. rather than 1:00. Also, you may not be able to get into the hearing room very much in advance of that time, so please plan accordingly.

>

> Thank your for your attention to this notification.

>

> Judge Young

**CC:** <lfvaughn@duke-energy.com>, <elleman@eos.ncsu.edu>, Anthony Baratta <AJB5@nrc.gov>, Antonio Fernandez <AXF2@nrc.gov>, James Cutchin <JMC3@nrc.gov>, Margaret Bupp <MJB5@nrc.gov>, Susan Uttal <SLU@nrc.gov>, <acotting@winston.com>, <drepka@winston.com>, <MWetterhahn@winston.com>

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
DUKE ENERGY CORPORATION ) Docket Nos. 50-413-OLA  
 ) 50-414-OLA  
(Catawba Nuclear Station, Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (CONFIRMING JULY 16, 2004, BENCH RULING SUSPENDING DISCOVERY PROCEEDINGS PENDING FURTHER COMMISSION GUIDANCE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Ann Marshall Young, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Anthony J. Baratta  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Thomas S. Elleman  
Atomic Safety and Licensing Board Panel  
5207 Creedmoor Rd., #101  
Raleigh, NC 27612

Susan L. Uttal, Esq.  
Antonio Fernández, Esq.  
Margaret J. Bupp, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Henry B. Barron, Executive Vice President  
Nuclear Operations  
Duke Energy Corporation  
526 South Church Street  
P.O. Box 1006  
Charlotte, NC 28201-1006

Mary Olson  
Director of the Southeast Office  
Nuclear Information and Resource Service  
729 Haywood Road, 1-A  
P.O. Box 7586  
Asheville, NC 28802

Diane Curran, Esq.  
Harmon, Curran, Spielberg  
& Eisenberg, L.L.P.  
1726 M Street, NW, Suite 600  
Washington, DC 20036

Docket Nos. 50-413-OLA and 50-414-OLA  
LB MEMORANDUM AND ORDER  
(CONFIRMING JULY 16, 2004,  
BENCH RULING SUSPENDING  
DISCOVERY PROCEEDINGS PENDING  
FURTHER COMMISSION GUIDANCE)

David A. Repka, Esq.  
Anne W. Cottingham, Esq.  
Mark J. Wetterhahn, Esq.  
Winston & Strawn LLP  
1400 L Street, NW  
Washington, DC 20005

Paul Gunter  
Nuclear Information and Resource Service  
1424 16<sup>th</sup> St., NW, Suite 404  
Washington, DC 20036

Lisa F. Vaughn, Esq.  
Duke Energy Corporation  
Mail Code - PB05E  
422 South Church Street  
P.O. Box 1244  
Charlotte, NC 28201-1244

Timika Shafeek-Horton, Esq.  
Duke Energy Corporation  
Mail Code - PB05E  
422 South Church Street  
Charlotte, NC 28242

  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 28<sup>th</sup> day of July 2004